

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re CHARLES P., et al., Persons Coming
Under the Juvenile Court Law.

B239741

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

(Los Angeles County
Super. Ct. No. CK91232)

Petitioner and Respondent,

v.

M.M.,

Respondent and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County. Marguerite D. Downing, Juvenile Court Judge. Affirmed.

Roland Koncan, under appointment by the Court of Appeal, for Respondent and Appellant.

John F. Krattli, County Counsel, James M. Owens, Assistant County Counsel, and Kim Nemoy, Principal Deputy County Counsel, for Petitioner and Respondent.

SUMMARY

The mother, M.M., (Mother) appeals from the juvenile court's order of February 24, 2012, declaring her five children dependents of the court under Welfare and Institutions Code¹ section 300, subdivisions (a) and (b).

On appeal, Mother contends that substantial evidence did not support the findings under section 300, subdivision (a) that the children suffered, or were at substantial risk of suffering, serious physical harm inflicted nonaccidentally by a parent nor the findings under subdivision (b) that the children suffered, or were at substantial risk of suffering serious physical harm or illness as a result of the failure or inability of a parent to supervise or protect the child adequately or the inability of a parent to provide regular care for the child due to the parent's mental illness, developmental disability or substance abuse. We affirm.

STATEMENT OF FACTS AND PROCEDURE

On December 23, 2011, the Los Angeles Department of Children Services ("DCFS") filed a section 300 petition ("Petition") on behalf of Mother's five children — Charles (then 17 years old), Briana (then 15 years old), Robin (then 14 years old), R.P. (then 12 years old) and Kobe (then 9 years old) (collectively, the children) — alleging that the children were exposed to domestic violence between Mother and Charles P., Sr. (Father) (Charles, R.P. and Kobe's father²) and alcohol abuse by Father.

Specifically, in counts a-1 and b-1 which are identical, it alleges that Mother and Father had a history of engaging in violent physical altercations in which Father struck Mother with his fists. It also alleges that the parents violated an active restraining order by having contact with each other and that Mother allowed Father to frequent the home and have unlimited access to the children. The Petition alleges that Father had a history of multiple convictions for assault and battery as well as a history of alcohol abuse and

¹ Statutory references are to the Welfare and Institutions Code unless otherwise indicated.

² The fathers of Briana and Robin are not parties to this action and their whereabouts are listed as unknown.

was a current abuser of alcohol. It also alleges that on November 30, 2011, Father broke a window in the children's home in their presence and that Father was arrested and charged with violating the restraining order on November 30, 2011 and on December 7, 2011.

In count b-2, the Petition alleges that Father has a history of alcohol abuse and is a current abuser of alcohol, rendering him incapable of providing the children with regular care and supervision. It also alleges that on or about December 6, 2011, and on prior occasions, Father was under the influence of alcohol while the children were in his care and supervision and that Father's alcohol abuse endangers the children, placing them at risk.

In a December 23, 2011 hearing with no family members present, the juvenile court ordered all five children released to Mother and found a prima facie case was established for detention of all the children as to the Father. Specifically, the juvenile court found that a substantial danger existed, and there were no reasonable means to protect the children without removal from the care and custody of Father. The matter was continued to December 29, 2011 for Father's arraignment.

DCFS filed a Non-Detained Report ("Non-Detained Report") on December 29, 2011, stating the children resided with Mother and recommended that the children be detained from Father. The Non-Detained Report stated that on December 2, 2011, DCFS received a referral that alleged the children were victims of emotional abuse by Father. The caller reported that in August of 2011, Mother and Father had a domestic violence incident and a restraining order was given to Mother;³ however, on November 30, 2011 at 1:00 a.m., Father came back to the home and broke out windows and vandalized the home. The Non-Detained Report stated "[i]t is unknown if the five children were home during the incident" though the caller believed the children were home given the time of the incident. The Father was apparently incarcerated as a result of the incident and reported to be scheduled to appear in court on the day of the call.

³ A copy of the restraining order was attached to the Non-Detained Report.

According to the Non-Detained Report, on December 7, 2011, a DCFS social worker arrived at Mother's home to conduct an investigation but received no response at the door and left a "request to contact letter." Mother called DCFS that same day, stating that her referrals had been closed. When told that this was a new referral regarding Father breaking the front windows of her home and Mother calling 911, Mother denied calling 911 and stated that her son broke the windows by accident. Mother also asserted that she took very good care of her children and they were not being abused.

Attached to the Non-Detained Report was a Sheriff's Department Incident Report for the November 30, 2011 incident. According to the sheriff's report, Mother told deputies responding on the scene that Father arrived at the house angry and drunk, banging on the door and a bedroom window with such force that he broke it, and that Mother feared for her safety and property. The sheriff's report also reported that Mother told sheriffs that three months earlier Father was arrested for domestic violence and the court in the matter issued a protective order prohibiting Father from coming within 100 yards of Mother's home and prohibiting Father from bothering her. A sheriff deputy ran a check of computer records and confirmed the existence of the restraining order and arrested Father.

The Non-Detained Report also stated that on December 8, 2011, DCFS received another referral in which the caller stated they did a probation search that morning at the home in regard to Charles and found Father inside the home under the influence of alcohol. Father was arrested again for violating the restraining order. Mother was reported to be uncooperative, refusing to provide information, including the children's names and whether they had ever been exposed to any incidences of domestic violence. According to the caller, Mother kept allowing Father to return to the home placing the children at risk for emotional harm, that Father had a history of domestic violence, had a restraining order filed against him in August of 2011, and had most recently been arrested for breaking the windows of Mother's home on November 30, 2011. Mother was asked

why she allowed him back in the home and she replied, ““(H)e is homeless and needs a place to stay.””

According to the Non-Detained Report, a DCFS social worker went to the home on December 8, 2011 and spoke to Mother. Mother denied that Father broke the windows and had been staying in the home. Further, Mother denied having knowledge of the restraining order for which Father was arrested and stated that her children were safe, not being abused, and they had food and clothes. While the DCFS social worker was at the home, the children started arriving home from school but Mother would not allow the social worker to interview them.

The Non-Detained Report stated that on the same day, December 8, 2011, the DCFS social worker met with detectives at the Compton Sheriff’s Office. One detective stated that on November 30, 2011, Mother called 911 at approximately 1:00 a.m. and reported that Father was at the home pounding on the door and windows and had broken two windows, and Mother was afraid for her safety and property. According to the detective, Father stated that he was aware the court had issued a domestic violence protective order and that he had violated the order because Mother had sent him a text asking him to come to the home. Father was arrested for violating the protective order. Another detective stated that Father was arrested again for violating the protective order on December 7, 2011. The second detective stated that when he was assisting several detectives with a probation compliance check of Charles, both Father and Mother were at home in their pajamas, that Father had unsteady gait, slurred speech, was argumentative, and had a strong odor of alcohol on his breath.

Attached to the Non-Detained Report was a Sheriff’s Department Incident Report for the December 7, 2011 incident. According to the sheriff’s report, deputies went to Mother’s home to conduct a probation check of Charles at about 8:00 a.m. and Mother and Father answered the door. Charles was not at home, but other children were home.⁴

⁴ According to the sheriff incident report, after answering the door, Father walked outside while Mother “stayed inside with their children.” When the deputy returned to interview Mother, she refused to provide her children’s identities.

The reporting deputy recognized Father because the deputy had seen a photograph of Father when he responded to a call from Mother's home on October 27, 2011 during which Mother, who was crying, stated that Father was drunk and harassing her, Father had fled the location, and Mother had a restraining order against Father. The sheriff's report on the December 7, 2011 incident stated that Father showed signs of being under the influence of alcohol and stated that "'I didn't sock her up this time!!'" before saying that he has never hit Mother.

The sheriff's report also stated that Mother claimed she never called the police on Father and never placed a restraining order on him and denied making a report on the November 30, 2011 broken window incident. Later in the conversation she admitted that Father hit her once and that during the November 30, 2011 incident one of the deputies advised her of the protective order, but claimed not to recall telling the deputy about the restraining order during the October 27, 2011 incident. According to the sheriff's incident report, Mother stated that she allowed Father back into her house because he was homeless. When the deputy reminded Mother she had been crying during the October 27, 2011 incident, Mother said it was in the past and today is the present and later ended the conversation by stating she could not be forced to talk or testify. The sheriff's report also stated that the deputy obtained and reviewed the 911 voice files and recognized Mother's voice on the November 30, 2011 and October 27, 2011 calls.

The Non-Detained Report did not contain any statements from the children, stating "Mother is refusing access to the Children."

The Non-Detained Report listed Mother as having five prior DCFS investigations starting in 2004; two of the allegations were determined to be unfounded and three were inconclusive. The report also listed Mother as having two prior misdemeanor convictions including a 2003 conviction for willful cruelty to a child although she denied having a criminal history to the DCFS social worker. The Non-Detained Report also showed Father as having nine convictions, including convictions for assault and for battery. Attached to the Non-Detained Report was a copy of Father's criminal history.

In the Non-Detained Report, DCFS asserted that this family was at ““Very High Risk”” based upon the referral history, Father’s extensive history, Mother’s refusal to cooperate and participate in services, and the parents not abiding with the domestic violence protective order in that Mother continued to allow Father in her home and expose the children to domestic violence. Also, Mother minimized the domestic violence incidents and the fact that law enforcement had been out to her home for domestic disputes over ten times since May of 2011.⁵

On December 29, 2011, DCFS filed an Addendum Report recommending the children reside with Mother and monitored visits for Father.

On December 29, 2011, Mother, Briana and Robin were present for the hearing; Father was not present. The juvenile court noted Father was in local custody. The court rendered paternity findings as to all three fathers, finding Father was the presumed father of Charles, R.P. and Kobe. The court noted that the children were ordered released to Mother with family maintenance services and detained from Father, and the court allowed that placement to remain.

On January 27, 2012, DCFS filed a Jurisdictional/Disposition Report. The report included statements from the children, although the DCFS social worker noted that she met “a great deal of opposition in her attempts to interview the mother and children” noting that the children were agitated and did not wish to speak to her alone and in private. According to the Jurisdiction/Disposition Report, all the children denied physical abuse or inappropriate touching. The children made the following statements.

Charles was only willing to provide a statement about the broken window, stating that he accidentally broke the window while playing in the house when his girlfriend/mother of his child was visiting. Charles declined to provide any additional information. Briana, Robin, R.P. and Kobe stated that the Petition allegations about the November 30, 2011 incident were not true and that Charles and his girlfriend broke the window while playing in the house. Robin, R.P. and Kobe stated they were not home

⁵ Incident history reports were attached to the Non-Detained Report for the nine incidents from May 2011 to November 2011.

when the window was broken, Robin and Kobe saying they were out trick or treating and R.P. saying she was in Hollywood. Robin stated that Charles called Mother when they were on their way home and initially lied and said someone threw a rock through the window but later admitted to playing in the house. Briana, R.P. and Kobe made statements to the effect that Father does not live in the house, was not around or was never there.

Robin stated that Father never drank in front of her and they had not seen him in awhile. Briana stated the alcohol use allegation was untrue but also stated that she did not know what Father does because he was not around. R.P. did not know if the allegations were true as she was not around the home and Kobe stated the allegation was untrue.

The Jurisdiction/Disposition Report also indicated that DCFS social worker interviewed Mother. With respect to the November 30, 2011 incident, Mother stated that her son Charles was playing in the house and threw a remote control and it accidentally hit the window. Mother denied that Father entered her home on that night and stated that Father had been found walking the streets and was arrested. With respect to the December 7, 2011 incident, Mother stated that Father stopped by the home at 8:00 a.m. to provide her with money for the children and Father answered the door when the police knocked and was told to leave the home. Mother stated the Father was not drinking that morning but had been drinking the night before. Mother told the police they had the wrong person as they were there to do a probation check on her son Charles who was not home. According to Mother's statement, the police arrested Father and returned later and asked for Mother's identification card and threatened to call DCFS when she refused to give her card. The following day, DCFS came to her home.

According to the Jurisdiction/Disposition Report, a DCFS social worker interviewed Charles's girlfriend. She stated that she and Charles were playing in the house and he accidentally threw the remote control out of the window. She stated that she spends a lot of time at the home and Father was not there. With respect to Father's

history of alcohol abuse and current abuse of alcohol, she stated that it was untrue that the times she has seen Father he was drinking.

In regard to the dispositional assessment/evaluation, DCFS reported that Mother and Father had a history of engaging in violent altercations as evidenced by their criminal history reflecting domestic violence, and as per the incident reports from Compton Sheriff's Department that reflected nine separate 911 calls from Mother in 2011. The Jurisdiction/Disposition Report noted the December 7, 2011 sheriff's report supported the contention that Father was arrested for violating the restraining order, but it was not because a violent incident had occurred. Mother stated that she filed the restraining order out of fear that her children would be removed from her care. Mother also stated that she and Father had a hearing scheduled to lift the restraining order. Mother refused to participate in a domestic violence program, but agreed to participate in individual counseling sessions.

The Jurisdiction/Disposition Report stated that DCFS would refrain from making a recommendation in this report, pending a Team Decision Making Meeting ("TDM") on behalf of Father to explore voluntary services. Among the attachments to the Jurisdiction/Disposition Report was the Non-Detained Report and its attachments.

On February 9, 2012, DCFS filed a Last Minute Information For The Court form stating that Father did not show up for his TDM and that DCFS social worker was unable to verify Mother's enrollment in any of the recommended programs.

The February 9, 2012 pretrial resolution conference did not resolve the case and the matter was continued for an adjudication hearing on February 24, 2012.

On February 24, 2012, the adjudication hearing was held. Mother, Briana and Charles's girlfriend were present. County Counsel admitted into evidence without objection, the January 27, 2012 Jurisdiction/Disposition Report with attachments, and the February 9, 2012 Last Minute Information for the Court with attachments. Then, County Counsel submitted, as did minors' counsel. Mother's counsel submitted an exhibit list identifying one item, a November 4, 2011 letter from DCFS addressed to Mother with an identified referral date of September 6, 2011. The letter was admitted into evidence

without objection. It stated that the allegation of emotional abuse of the children by Father was concluded as an “Inconclusive Report” and the allegation of general neglect by Mother was concluded as an “Unfounded Report.” The letter also thanked Mother for her cooperation and indicated that effective November 4, 2011, the case was closed.

Mother’s counsel then called the DCFS dependency investigator (“DI”), who authored the Jurisdiction/Disposition Report, to testify. The DI testified that altercations between Mother and Father occurred on August 8, 2011, September 6, 2011 and December 1, 2011. The investigation of the August 8, 2011 incident was inconclusive and the allegations of the September 6, 2011 incident were unfounded as to general neglect and inconclusive as to emotional abuse. As to the November 30, 2011 broken window incident, the DI testified that she did not have any evidence that Father broke the window and Mother and the children all stated that Charles broke the window. The DI did not know if Father lived in the family home and did not know when the children last had contact with Father. The DI did not know if the children ever witnessed any domestic violence between Mother and Father. According to the detention report, the children were not present in the home on the 7th of December.

On cross examination by minors’ counsel, the DI testified that she did not ask the children during interviews if they had witnessed domestic violence between Mother and Father because, although the children did speak to her, “there was a great deal of opposition” and she did not interview the children privately. Under cross-examination by County Counsel, the DI explained that interviewing the children was “almost as if it was under duress,” that Mother had to tell them to come to the table, and the children appeared upset about being interviewed. The DI also explained that the interviews were not private as Mother was present in the kitchen and could hear the interview and the children moved back and forth from the kitchen to the living room during the interviews.

The DI also testified that in September 2011, Father was convicted of corporal injury to a spouse and a restraining order was issued. The DI stated that a detective relayed that on November 30, 2011, Mother called 911 and stated Father was outside the home, banging on and breaking a window and that Mother was afraid. Father was in

violation of the restraining order on November 30th and December 7th, when Father was arrested and intoxicated. The DI stated that Mother does not return calls and DCFS workers had difficulty visiting the children.

On re-direct examination by Mother's counsel, the DI testified that Mother encouraged the children to sit down and speak to her. The DI did not know if Mother was listening while she interviewed the children. The DI asked to speak separately and privately to the children. The DI stated that she believed there was a risk that the children "may have observed the domestic violence incident."

In closing arguments, minors' counsel requested that the Petition be dismissed in its entirety, arguing the Petition was factually inaccurate in that Charles broke the windows not Father, as corroborated by all the children, Mother and Charles's girlfriend. The juvenile court asked counsel if minors' counsel's clients was "scared or something?" and counsel responded that the children had unequivocally stated to her that they "feel no fear, no risk of Father, no fear of harm in any way, shape or form." Minors' counsel described the children's relationship with Father as "nonexistent" and concluded that DCFS's concerns about the children's exposure to domestic violence was speculative. Minors' counsel argued that the children had no motive to lie and their statements were consistent that Father did not break the windows.

Mother's counsel joined in the comments of minors' counsel and added that the closest thing to an incident was in regard to the September 6th referral and the DCFS letter in evidence concluded that it was "unfounded." Mother's counsel also argued that there was no reason not to believe that Charles broke the window and that the family stated that this occurred during Halloween which was during the time period covered by the prior referral's investigation. Further, Mother's counsel argued that the reports indicated that for the November 30, 2011 incident, Father was not in the home and that Mother did call the police. For the December 7, 2011 incident, the police stopped by the home to do a probation check on Charles and there was no domestic violence incident. Mother's counsel noted there was no evidence that Father came to the home regularly or

lived in the home and argued that the family was doing fine as evidenced by the conclusion noted by DCFS in their November 4, 2011 letter.

County Counsel then requested that the juvenile court sustain the Petition as pled or conformed to proof. Counsel noted the August 2011 restraining order was currently active and Father violated it on November 30, 2011 and December 7, 2011. County Counsel also noted that Father stated that Mother asked him to come to the home on November 30 and Mother called 911 because Father was drunk and pounding on a window, but Mother denies the incident and claims Father was just walking around the neighborhood and happened to be arrested. County Counsel noted Mother's continued denial of domestic violence since DCFS's involvement and Mother and children's resistance to services and argued that, without the parents addressing their domestic violence, the court could not ensure the children's safety.

The juvenile court sustained all three counts of the Petition, counts (a-1), (b-1) and (b-2). To support the findings, the court relied on the sheriff's incident report that in September 2011, Mother called the sheriff's department and described Father as drunk and angry and pounding the window with such force that it broke and stated that she was fearful of her safety. The tape of the 911 call indicated that Mother said Father broke the window and the court stated, "[s]o for everybody to now say that Charles Junior threw a remote to it, I find to be improbable and agree with [county counsel]'s assessment that they're being less than candid . . . causes me to believe they're not being truthful and so I have to discount most of everything that has come in." The court also relied on the history of eight 911 calls from the Mother, which indicated that Father hit Mother's nose with his fist, knocked down the door and broke windows. Mother asked Father to leave and he refused and Father refused to cooperate with DCFS. The court also noted that Mother refused to get into domestic violence programs and continued to deny there was a problem and only got the restraining order to keep DCFS from taking the children away but has not followed up with the spirit of the restraining order. The court concluded that because Father would come to the home drunk and abuse Mother, and Mother makes no

effort to do anything to stop him, “these children are at risk of serious physical and emotional abuse.” The court then sustained the Petition as alleged.

The juvenile court declared all five children dependents of the juvenile court under section 300, subdivisions (a) and (b), ordered the children to remain home with Mother under supervision of DCFS, and ordered counseling for Mother and children. The parents were ordered to make the children available to DCFS for unannounced home calls and Mother was ordered to comply with any valid restraining order. The juvenile court noted that it wanted Mother to do a domestic violence victim’s program, stating “I have no evidence that she’s learned anything because she continued to let this man come by . . . and calls the police almost once a month about his behavior. Yet when [DCFS] stepped in to provide services, she does not want to cooperate.”

Mother filed a timely appeal.

DISCUSSION

On appeal, Mother argues that the evidence was insufficient for the juvenile court to sustain the three counts in the Petition against Mother under section 300, subdivisions (a) and (b). Specifically, Mother argues that there is no evidence that the children ever sustained any harm or injury nor any evidence to support the conclusion that the children were at substantial risk of suffering serious physical harm.⁶ We disagree and affirm.

A. Standard of Review

“The basic question under section 300 is whether circumstances at the time of the hearing subject the minor to the defined risk of harm. (*In re Nicholas B.* (2001) 88 Cal.App.4th 1126, 1134.) “Proof by a preponderance of evidence must be adduced to support a finding that the minor is a person described by Section 300” at the jurisdiction hearing. (§ 355, subd. (a).)

“In reviewing the jurisdictional findings and the disposition, we look to see if substantial evidence, contradicted or uncontradicted, supports them. [Citation.] In making this determination, we draw all reasonable inferences from the evidence to

⁶ Mother also argues that because the jurisdictional findings were erroneous, the disposition orders based upon them were also incorrect.

support the findings and orders of the dependency court; we review the record in the light most favorable to the court's determinations; and we note that issues of fact and credibility are the province of the trial court. [Citation.]" (*In re Heather A.* (1996) 52 Cal.App.4th 183, 193.) "We do not reweigh the evidence or exercise independent judgment, but merely determine if there are sufficient facts to support the findings of the trial court." (*In re Matthew S.* (1988) 201 Cal.App.3d 315, 321.)

B. Sufficiency of the Evidence

Section 300, subdivision (a), allows a finding of dependency when "[t]he child has suffered, or there is a substantial risk that the child will suffer, serious physical harm inflicted nonaccidentally upon the child by the child's parent or guardian. For the purposes of this subdivision, a court may find there is a substantial risk of serious future injury based on the manner in which a less serious injury was inflicted, a history of repeated inflictions of injuries on the child or the child's siblings, or a combination of these and other actions by the parent or guardian which indicate the child is at risk of serious physical harm." The child need not have been actually harmed in order for the court to assume jurisdiction. (*In re James R.* (2009) 176 Cal.App.4th 129, 135; *In re Giovanni F.* (2010) 184 Cal.App.4th 594, 599.) In other words, "[j]urisdiction under section 300, subdivision (a) requires proof that the child suffered or is at substantial risk of suffering 'serious physical harm inflicted nonaccidentally upon the child by the child's parent or guardian.'" (*In re Daisy H.* (2011) 192 Cal.App.4th 713, 716.)

Under section 300, subdivision (b), jurisdiction is appropriate where the court finds "[t]he child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent or guardian to adequately supervise or protect the child, . . . or by the inability of the parent or guardian to provide regular care for the child due to the parent's . . . substance abuse." "[T]hree elements must exist for a jurisdictional finding under section 300, subdivision (b): '(1) neglectful conduct by the parent in one of the specified forms; (2) causation; and (3) "serious physical harm or illness" to the minor, or a "substantial risk" of such harm or illness.' [Citation.] 'The third element "effectively requires a

showing that at the time of the jurisdiction hearing the child is at substantial risk of serious physical harm in the future (e.g., evidence showing a substantial risk that past physical harm will reoccur). [Citations.]” [Citation.]” (*In re J.O.* (2009) 178 Cal.App.4th 139, 152.)

Children can be “put in a position of physical danger from [spousal] violence” because, “for example, they could wander into the room where it was occurring and be accidentally hit by a thrown object, by a fist, arm, foot or leg” (*In re Heather A.*, *supra*, 52 Cal.App.4th at p. 194.) Such is the situation in the instant case given the frequency of the episodes, Father’s level of intoxication, and the type of violence (thrown objects and use of a cane). Here, Father and Mother continue to interact, and it is probable he will again use violence against her. There was substantial evidence that Mother and Father had a history of domestic violence. As the court noted, Mother called 911 nine times from her home during May 2011 to November 2011 and the incident history reports indicate that these calls were prompted by Father hitting Mother in her nose with his fist, trying to kick her front door open, hitting Mother with a cane on the head, refusing to leave when asked, and breaking windows on the house. Father had a history of criminal convictions for drugs, battery and assault charges. A restraining order was issued against Father in August 2011 based on a domestic violence incident. The sheriff’s report on the November 30, 2011 incident showed that Mother told responding deputies that Father had arrived at the house angry and drunk and broke the window. While there was contrary evidence in statements from Mother and children claiming that Charles broke the window and Father was never at the home, the juvenile court did not find these statements to be credible and we do not reweigh the evidence. Given the numerous incidents involving spousal violence, the trial court concluded that there is a substantial risk that the children will suffer physical harm.

Finally, to the extent Mother argues that the juvenile court should not have relied on the hearsay statement in the 911 calls, the referrals, police reports and other evidence in the DCFS reports, Mother has waived these arguments by failing to object below. (§ 355, subs. (b), (c)(1).) Our Supreme Court instructs that such a DCFS report “fits

within the class of ‘legally admissible’ evidence on which a court can rely in a jurisdictional hearing, despite the fact that a social study is itself hearsay and may contain multiple levels of hearsay.” (*In re Cindy L.* (1997) 17 Cal.4th 15, 21.)

Likewise to the extent Mother argues that the actions of Father as a noncustodial parent cannot be the sole justification to assert jurisdiction, this contention is without merit as Father’s actions were not the sole basis for the juvenile court’s assertion of jurisdiction. The juvenile court was clear that it was concerned by Mother’s continued willingness to allow Father to return to the home despite the protective order.

We find that substantial evidence supports the juvenile court’s determination that the children fall within the purview of section 300, subdivisions (a) and (b) in that there is a substantial risk that the children will suffer physical harm during a domestic violence episode between Mother and Father.

DISPOSITION

We affirm.

NOT TO BE PUBLISHED.

CHANEY, J.

We concur:

ROTHSCHILD, Acting P. J.

JOHNSON, J.